

GLOBALIZATION IN THE CONTEXT OF NIGERIA AND ITS IMPACT ON THE UNIVERSALITY OF HUMAN RIGHTS

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Abstract

The aim of this paper is to examine globalization within the Nigerian context and its impact on the universal application of human rights. This paper majorly employed the doctrinal research methodology through an examination of texts and articles covering the topic. This paper found that globalization has enhanced the proliferation of international human rights instruments in the form of treaties, declarations, protocols and so on, with states being party to at least one human rights instrument. However, owing to globalization, states are also confronted with new and complex challenges as a result of globalization. The present narrative therefore, is the disparity between commitment and compliance in respect of the universal application of human rights standards. An urgent paradigm shift in this regard was therefore recommended. If the state is to remain in continued existence, human rights principles must not be made subservient to other considerations by states. It was further recommended that multilateral institutions must urgently begin to input human

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rights considerations in their policies. NGOs on their part, must also take advantage of the opportunity afforded by globalization to sensitize as well as mount concerted pressures on states to effect the much needed change in human rights primacy over other considerations.

Keywords: Globalization, Human rights, Universality

1. Introduction

Globalization has always assumed the central focus of academic attention. From a term christened to mean 'anything, everything and also nothing',¹ the debate as to its meaning, scope and historical antecedence have always been heated in both academic circles as well as world politics discourses. However, an area of seeming convergence amongst scholars is in the scope of globalization in that it entails a multi-dimensional process which permeates overlapping social, economic, political, ideological and cultural fields of human existence. Indeed it has been said to be 'the fate of humanity.'²

Currently, the term 'Globalization' has attracted closer scrutiny especially when viewed in respect of its impact on these other areas. The scrutiny of the concept called Globalization is not close-ended rather it has also in very recent times been extended to the implication of events on its continued existence or form. Events like the 9/11 attack, 2008 financial crisis and of course, the ongoing

¹ R Munck, Labour in the Global: Challenges and Prospects in R. Cohen and S. M. Rai (eds.), *Global Social Movements* (Illustrated edn London: Athalone Press, 2000) 84.

² J Sachs, *The Ages of Globalization: Geography, Technology, and Institutions* (1st edn New York: Columbia University Press 2020).

Coronavirus (COVID-19) Pandemic,³ have occupied the fur of the open-ended scrutiny to ascertain the prospects of Globalization in contemporary times.

This paper is however saddled with the task of examining globalization in the context of Nigeria as well as its impact on the universality of human rights. Despite the fact that globalization has resulted in the proliferation of international human rights instruments, upholding the principle of what these laws represent has been an entirely different matter. This work examines the reason for incidences of departure from the universal application of human rights by states. This work observes that while globalization cuts across multi-dimensional fields or areas of states, respect for human rights remains the bastion for assessing the legitimacy of states in the first place. In other words, while globalization criss crosses these various areas of statehood, human rights protection stands as a beacon for tagging these states as civil, legitimate and democratic. It is based on the foregoing nexus between both concepts, that this paper examines the topic.

This paper commences the task by considering the meanings of globalization. On this score, major definitions, types and scope of globalization is examined. Furthermore, the paper briefly considers the evolution of the concept before considering globalization in contemporary terms. Human Rights as a concept is thereafter explained through the lens of universality and the trajectory of the

³ The current pandemic reminds the world quite abruptly that globalization has costs as well as benefits. A situation where a virus spreads from China to Italy within 14 hours unlike the Black Death of the 14th Century which took over 14 years to spread from China to Italy. J. Sachs during an Interview by Monocle, *The Foreign Desk*, 'Jeffery Sachs and the Future of Globalisation on 13 June, 2020 (Episode 336). <<https://monocle.com/radio/shows/the-foreign-desk/336/>> accessed on 14 June, 2020.

International Human Rights Law regime is considered. It is after the above issues have been addressed, that the paper examines the impact of globalization on the universality of human rights in recent times.

2. Meanings, Dimensions and Evolution of Globalization

Attempts to proffer an all-encompassing definition of the term, 'Globalization', can be likened to the traditional Eastern fable of the blind men and an elephant, in which different people experience an elephant differently according to their subjectivities;⁴ in this instance, scholars describe the concept of globalization from different perspectives within their respective reach. It is therefore in this sense, that globalization has been held out to mean different things to different people and different things to the same people across time and space.⁵

Interestingly, the concept of globalization was relatively non-existent some thirty years ago, but today it is easily a catch phrase on every tongue.⁶ Indeed, frantic efforts have been made in situating the origin or evolution of globalization. While some

⁴ I Shah, *Elephant in the Dark: Christianity, Islam and Sufis* (New edn London: ISF Publishing 2019).

⁵ JS Omotola, 'Globalization in Poverty: Deregulation of Disempowerment in Nigeria', Paper presented at the National Conference on Deregulation in a Globalization Economy, organized by Faculty of Social Sciences, Ambrose Alli University, Ekpoma, May 24-26, 2004; ACAman Jr., Introduction, [1993] (1) *Indian Journal of Global Legal Studies*, 1.

⁶ AGiddens, *Sociology* (6th edn Malden: Polity Press 2009) 126.

scholars contend that globalization is not new,⁷ others maintain that it is, since it is qualitatively different from what has come before.⁸ Giddens however observed that there are few terms that we use so frequently but which are in fact as poorly conceptualized as globalization.⁹ It was in this sense that Sopa stated that we don't know what globalization is, but we have to act.¹⁰ Indeed, previous definitions of globalization have equated the concept to mean internationalization, liberalization, universalization and westernization. Scholars who reject the novelty and transformative potential of globalization in contemporary history have almost invariably defined the term in one or several of these four redundant ways.¹¹ These reasons give the required impetus for the consideration of key definitions proffered in the quest to comprehend what globalization really is all about.

⁷ Sachs(n.3). He maintains that globalization is as old as humanity as the human species have been globalizing since time immemorial; JG Williamson, 'The Evolution of Global Labour Markets Since 1830: Background Evidence and Hypotheses' [1995] (32) *Explorations in Economic History* 141.

⁸ MCVan Der Bly, Globalization: Triumph of Ambiguity [2005] (53) (6) *Current Sociology*; 875 at 881. He maintains that globalization is both a historical process and a condition. As a condition it is a situation of increasing interconnectedness across time and space while as a historical process it is a modern process but with roots in earlier processes of the 16th-19th centuries namely the spread of trade among great powers and colonialism in the Americas, Asia and Africa.

⁹ A Giddens, 'On Globalization', excerpts from a keynote address at the UNRISD Conference on Globalization and Citizenship, 1 December 1996. <www.unrisd.org> accessed on 13 March, 2020.

¹⁰ VSopa, a Peasant activist in North East Thailand, interviewed in Bangkok on 10 June 2002.

¹¹ JA Scholte, *What is Globalization? The Definitional Issue-Again* [December 2002] (109) (2) *CSGR Working Paper*; 6-8.

Globalization has been defined as a process or (set of processes) that represents a transformation in the spatial organization of social relations and transactions, generating transcontinental or interregional flows and networks of activity, interaction, and power.¹² It has also been viewed as resulting in borderless interactions to the effect of *de-territorialization* or the growth of supraterritorial relations between people.¹³ Reflecting its capacity in ‘time-space compression’,¹⁴ it signifies a multidimensional set of social processes that create, multiply, stretch, and intensify worldwide social interdependencies and exchanges while at the same time fostering in people a growing awareness of deepening connections between the local and the distant.¹⁵

Doubtful views have also been presented. Santos stated that there is nothing like genuine globalization because what is so referred to as globalization is merely the successful globalization of a given localism.¹⁶ This is because there is no global condition for which a local root or source of cultural trace is not tied to or embedded.¹⁷ To him the world is as much a place of localization as well as of globalization. He argued that the concept of globalization is not a singular unit but plural as it consists of a set of social relations

¹² DHeld and others, ‘Globalization’ [1999](5) (4) *Global Governance*; 483.

¹³ JAScholte, *Globalization: A Critical Introduction* (Illustrated edn Basingstoke: Macmillan 2000) 46; KFrostell, ‘Globalization and Women’s Human Rights’(Unpublished Master’s Thesis, Institute for Human Rights Åbo Akademi University, June 2002) 7-8.

¹⁴ DHarvey, *The Condition of Postmodernity: An Enquiry into the Origin of Cultural Change* (1st edn Massachusetts: Blackwell 1990) 16.

¹⁵ MBSteger, *Globalization: A Brief Introduction* (1st edn, New York: Oxford University Press, 2003) 8-13.

¹⁶ BSSantos, *Toward a New Legal Common Sense: Law, Globalization and Emancipation*, (2nd ed., London: Butterworths, Lexis & Nexis, 2002) 178

¹⁷ *ibid.*

which inevitably change as they involve conflicts thereby resulting in the emergence of winners and losers.¹⁸ It has therefore been summarized as involving the simultaneity and the interpretation of what are conventionally called the global and the local that is, the universal and the particular, otherwise referred to as ‘Glocalization’.¹⁹

In an attempt to perhaps rid globalization off definitional problems, Holton argues that any useful definition of globalization must emphasize three aspects or elements namely:

- a. The intensified movement of goods, money, technology, information, people, ideas and cultural practices across political and cultural boundaries.
- b. The interdependence of social processes across the globe, such that all social activities are profoundly interconnected rather than separated off into different national and cultural spaces and
- c. Consciousness of, and identification with, the world as a single place, as informs cosmopolitan, religion or earth-focused environmentalism.²⁰

The idea of intensified movement of goods, money, technology, people etc. across political boundaries, enjoys particular acceptance compared to other aspects of globalization. Indeed it is in this sense that globalization is described as foremost an economic process despite entailing political, social and cultural processes or

¹⁸ *ibid.*

¹⁹ RRobertson, Glocalization: Time-Space and Homogeneity – Heterogeneity in M Featherstone, SLash and R Robertson(eds.) *Global Modernities* (1st edn London: Sage Publications, 1996) 30.

²⁰ R Holton, *Making Globalization* (1st edn Basingstoke: Palgrave Macmillan, 2005) 15.

dimensions.²¹ This contention is supported by the fact that trade in the earliest form of barter system which connected regions and people across the globe. The dimensions of globalization are discussed as follows:

Economic globalization: This deals with the worldwide spread of industrial production and new technologies promoted by unrestricted movement of capital and unfettered freedom of trade as well the resulting relationships that take place between states as well between them and non- state actors, say Intergovernmental organizations (World Bank, WTO, IMF) or MNCs. The resultant effect here is that monetary and fiscal policies of national governments are now dominated by movements in the international financial markets, thereby reducing the economic autonomy of nation-states. It is defined as the intensification and stretching of economic interrelations across the globe.²²

Political globalization: This is concerned with the intensification and expansion of political interrelations across the globe. This dimension of globalization has resulted in the weakening of statehood and boundaries as through the operation of globalization, non-state actors in the form of MNCs as well as intergovernmental institutions now threaten the sovereignty wielded by state. States as of today are either voluntarily or tacitly and implicitly losing substantial aspects of their sovereignty to transnational corporations and inter-governmental organizations in adaptation to the emerging ‘borderless world’.²³

²¹ A Y Seita, ‘Globalization and Convergence of Values’ [1997] (30) *CORNELL INT’L J*; 429.

²² T L Friedman, *The Lexus and the Olive Tree* (1st edn New York: Thomas, Farrar, Straus and Giroux, 1999).

²³ K Ohmae, *The Borderless World: Power and Strategy in the Interlinked Economy* (1st edn New York: Harper Business, 1990).

Social globalization: This is comprised of multiple areas ranging from health, education and other basic amenities. In this sense globalization through the adoption of neo-liberal economic relations amongst states results in reduction of public expenditure on health facilities thereby making states incapacitated in tackling problems related to these diseases.²⁴ In this same vein, the functioning of the neo-liberal ideology has led to the commodification of education and in some cases, a corporate takeover of the sector. Education which ordinarily is a non-market and social welfare is now transformed into a commercial activity.

Cultural globalization: This is concerned with the interchange of beliefs, customs, values and traditions between states of the world with each set in discreet competition for universal acceptance. It refers to, “the intensification and expansion of cultural flows across the globe”.²⁵ It is in this regard that the upsurge of ethnic identity politics and religious revival movements can also be viewed in the light of globalization.²⁶ It must however be noted that the cultural dimension of globalization is often subsumed into the social dimension.²⁷

Technological dimension of globalization reflects the most influential aspect of globalization in contemporary times with resulting rapidity and intensity in its processes. To a large extent it determines the nature, scope and pace of other dimensions of

²⁴ *ibid.*

²⁵ Steger (n.16).

²⁶ N Pieterse, ‘Globalization as Hybridization’, [1994] (9 (2) *International Sociology*); 165.

²⁷ URMirand others, *Understanding Globalization and its Future: An Analysis* [2014] (34) (2) *Pakistan Journal of Social Sciences*; 607-608; N.S. Okogbule, *Globalization and Human Rights in Africa* (1st edn Lagos: Sibon Books Limited, 2012) 21.

globalization. Simply put, globalization in this dimension presents the possibility of a product being manufactured in a particular state, while being packaged and designed in another. With the impact of modern technology, swift communication patterns which aids in trade as well as enhancing financial deals which can now be struck within minutes. Rapid social and cultural interactions through the mass media as well as the new media is now possible. The internet has become an invaluable instrument for mobilizing and building networks for and against globalization.²⁸

Environmental dimension of globalization projects the consciousness that the world is one big environment affected by acts or omissions of all states. Luhmann therefore argues that risk itself is a product of modernity.²⁹ In pre-modern times, all what happened was explained by fortune and destiny – the will of the supernatural.³⁰ In this sense, environmental risk faced by the world no longer lies within the exclusive confines of nature but also our activities with the free movement of persons, goods, ideas, values which consciousness is made through globalization.

Legal dimension of globalization refers to the institutional and legal structures that aid the operation of globalization processes in states. Globalization is legitimized and structured by rules, policies and doctrines which govern the current global financial and trade regime and same is driven by international legal institutions like the

²⁸ A. Pollis, ‘Human Rights and Globalization’ [2004] (3) *Journal of Human Rights*; 343.

²⁹ PG Jogdand and SM Michael, *Globalization and Social Movements; Struggle for a Humane Society*, (New 1st edn Delhi: Rawat Publications 2003) 4.

³⁰ NLuhmann, ‘Globalization and World Society: How to Conceive of Modern Society?’ <https://socialpolicy.ucc.ie/Luhmann_Globalization.htm> accessed on April 16, 2020.

IMF, WTO and World Bank, otherwise known as ‘agents of globalization’.³¹ These rules have trickled down to the regional level and also to the national level and same is driven by regional and national institutions. The legal dimension aids in situating the legal and institutional framework governing the application of globalization policies.

With the trio Colonialism, Foreign Direct Investment (FDI) and International law been held out as elements of globalization,³² Shelton further noted that international trade law is intrinsic to globalization. It is in view of these elements that the legal framework for globalization can be traced to the international law doctrine of *Pact Sunct Servanda* (Agreements must be obeyed) upon which treaties, protocols, declarations etc. governing international trade and human rights derive their binding nature from. Treaties on trade liberalization and economic integration like the Canada-United States-Mexico (CUSM) Agreement,³³ Comprehensive and Progressive Agreement for a Trans-Pacific Partnership (CPTPP), Association of South East Asian Nations (ASEAN) Free Trade Area Agreement (1992), Treaty of Economic Community of West African States (ECOWAS), African Continental Free Trade Agreement (AfCFTA), New Partnership for African Development (NEPAD) and so on. In regards to Nigeria, the legal framework for globalization include the Constitution³⁴ as well as other laws through which trade liberalization policies as

³¹ R. Munck, *Globalization and Contestation: The New Great Countermovement* (1st edn London and New York: Routledge 2006) 75.

³² L. Boule, ‘The Laws of Globalization’ [2006] (1) *The National Legal Eagle* 9 at 9-10.

³³ The CUSM Agreement was signed on 30 November 2018 to replace the North American Free Trade Agreement (NAFTA).

³⁴ CFRN 1999 (as amended).

evidenced by tariff cuts, incentives, quotas and so on.³⁵
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Immigration laws which aid in free movement of people into the state also forms the legal framework.

Streeten categorizes globalization into forms which according to him are: globalization from above and globalization from below.³⁶ While the former is expressed through multinational firms, international capital flows and world markets, the latter is concerned with environmental, women's and anti-nuclear movements, or as relevant to this work, human rights struggles. Indeed it has been said that these human rights movements have long established the foundation of the universal nature of the regime of human rights and freedom to the effect that they extend beyond the arena of purely national jurisdiction. These movements bear the capacity of mobilizing resistance against the hegemonizing tendencies that globalization from above presents.

3. Globalization and Human Rights

Human Rights are cherished entitlements endowed upon every person in virtue only of being a human and which are not extinguishable by derogations (even when they are massive,

³⁵ Nigerian Investment Promotion Commission Act Cap N117, LFN 2004, Central Bank of Nigeria Act, Cap 50, LFN 2010, Oil and Gas Free Zones Act Cap O5, LFN 2004; Nigeria Export Processing Zones Act Cap N107, LFN 2004; Immigration Act, (No. 8) of 2015.

³⁶ P Streeten, 'Globalization and its Impact on Development Co-operation', [1999] (42) (3) *Development*; 11; RO Keohane and J S Nye Jr., *Globalization; What's New? What's Not (And So What?)*, [2000] *Foreign Policy*; 1; Okogbule (n.27) 29; P O'Connell, 'On Reconciling the Irreconcilables: Neo-Liberal Globalization and Human Rights' [2007] (7) *Human Rights Law Review*; 483-509 at 488 -295. These forms have also been referred to as hegemonic or neo-liberal globalization and counter-hegemonic globalization respectively.

consistent and systematic) as they carry the status of innateness, being inherent, in alienable and therefore immutable.³⁷ Indeed, it is in the sense of their prominence that Umuozuirike observes that the true standard of a society may be determined from the adherence of its members especially the rulers to the principles of human rights.³⁸ Categorized in three generations,³⁹ this paper submits that categorization of human rights reduces the sanctity which the concept of human rights exude as it leads to giving primacy to a set over the others which approach portrays a narrow focus if indeed we are committed about creating a just and peaceful world, bereft of the horrors reflected during previous war eras.

Globalization is mostly associated with its economic dimension that is, with economic interdependence, deregulation, and a dominance of the marketplace that includes a shifting of responsibilities from state to non-state actors. This paper holds the view that this approach exalts the economic dimension of globalization over other human values and even above basic conditions of human beings themselves, thereby denigrating the social, cultural and especially political dimensions of globalization. Indeed, it is imperative to note that even the boundaries in which markets operate, are defined politically through negotiations

³⁷ O W Igwe, *Preliminary Studies in Human Rights Law* (1st edn Lagos: Rings and Favolit Ltd 2002) 6.

³⁸ *ibid*; A. Nsirimovu, *Human Rights Educational Techniques in Schools: Building Attitude and Skills* (1st edn Nawa Publishers 1994) 5.

³⁹ The Generation of human Rights are categorized into first, second and third generations. First generation rights are also called civil and political rights and is most comprised of rights like the right to life, freedom of speech, dignity etc. Second generation rights are also known as Economic, social and cultural rights and is comprised of the right to health, food, work, education etc. third generation rights or group rights are comprised of the right to development, self-determination etc.

between states in multilateral platforms, with ‘the power game always present in such negotiations’. It is in view of this, that other dimensions must not be downplayed if an understanding of globalization is sought.

The goal of globalization in achieving human rights lies in the theory that it would occasion economic development of states through trade growth which in turn would lead to the fulfillment of human rights. This has not been the case because globalization produces winners and losers amongst states not just in all its dimensions. Again, in as much as it has lifted few states from poverty, on the whole its effect has been that of inequality on a global scale with Indeed, there are varying schools of thoughts regarding this developing states particularly Africa (Nigeria) having little or no bite at the cherry.

Indeed, multilateral institutions like the WTO, IMF and World Bank who determine the rules of globalization, have in structure and in form, tilted against developed states. For instance, the WTO has been described as a veritable nightmare as despite being saddled with a mandate hinged on trade and commerce which has serious implications for human rights, its founding instrument makes scant human right provisions. The IMF has also assumed a recalcitrant stance in respect of human rights debate. The closest to human rights which the IMF has gotten to is the rather nebulous document on Good Governance issued in 1997 in response to the fact that a broader range of institutional reforms is needed to establish confidence and thereby lay the basis for sustained growth.

While these reforms are merely limited to treasury, budget preparation and approval procedures, tax administration and so on,

there also exists within its own internal governance system a democratic deficit as its leadership alongside that of the World Bank have always been confined meet with a particular ethnic origin. Indeed, while the World Bank appears to be well ahead in addressing criticisms against it which are largely centered on insensitivity to environmental, indigenous and minority concerns and gender, it has been committed to addressing the debt burden of states through the highly indebted poor countries (HIPC) initiative. On human rights, the bank has in conjunction with the UNDP issued certain guidelines perceived as its human rights obligations. In all, these frameworks of approach chorus the same anthem of conditionality and free market reforms. A lot more is needed to indoctrinate human rights considerations by the agents of globalization.

The above therefore brings this paper to the next issue which is the nature of the relationship between globalization and human rights. Some scholars opine that it is a linear relationship which reflects globalization constantly impacting on human rights protection, while some contend that though linear in nature, it is human rights which impacts on globalization processes. Okogbule however, advocates a mutual impact thesis in that both subjects are mutually re-enforcing. This work notes that it is only fair to highlight both the positives and negatives of globalization before dwelling on the negatives as being in the way of universality of human rights.⁴⁰

Indeed, globalization has impacted on human rights protection especially when Globalization ‘from below’ or counter-hegemonic globalization are considered. this form of globalization which reflects the concerns of individuals and groups throughout the

⁴⁰ Okogbule (n.27) 19.

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world has over the years accounted for the ability of civil society to function across borders and promote human rights - the proliferation of democratic regimes all over the world laying credence to this fact. The activities of state and non-state actors (like MNCs in Africa) have been steadily placed under scrutiny and pressure where necessary, especially where human rights violations are committed.

Through the technological dimension of globalization its impact has been both positive and negative. As expressed in enhanced information and technology, information about human rights violations can no longer be hidden or repressed by states because they can be easily detected, shared via the internet and necessary international non-governmental organizations, easily mobilized through coordinated action to ensure that such a state desists from such violations. This ease of co-ordination, information gathering and concerted plans afforded by globalization is also what aids terrorist groups as well as cyber fraudsters to effectively perpetuate human rights violations through war crimes and obtain sensitive personal data thereby infringing on the rights to life, dignity, property, privacy and so on. In Rwanda, the radio and television channel "*Radio-Television Libre des Mille Collines*" was an important avenue for inciting genocide.⁴¹ Internet too has been used for hate speech.

⁴¹ Free Radio -Television of the Thousand Hills (popularly known as the Hate Radio) during the Genocide in Rwanda was employed by anti-Tutsi broadcasts in inciting poor Hutu peasants to take up their reaping knives and incendiary torches and slaughter their Tutsi neighbours. ROliver and Z Artmore, *Africa since 1800* (5th edn New York: Cambridge University Press 2005) 345.

Human rights on its part has also impacted on globalization, it would be observed that multilateral international institutions like the World Bank, IMF and WTO have adopted a slight paradigm shift from what was the case in respect of capturing human rights considerations in their various policies. Owing to the efforts of various organs of the UN, human rights considerations are gradually been recognized by these organizations. For example the Sub-Commission on the Promotion and Protection of Human Rights (Sub-Commission) has undertaken studies on transnational corporations⁴² on the impact of globalization on the enjoyment of human rights generally,⁴³ the impact of globalization on racism and xenophobia,⁴⁴ the relationship between the enjoyment of human rights and income distribution,⁴⁵ and on human rights as the

⁴² SubCommission on Prevention of Discrimination and Protection of Minorities Res. 1998/8, *The Relationship Between the Enjoyment of Economic, Social and Cultural Rights and the Right to Development, and the Working Methods and Activities of Transnational Corporations*, U.N. ESCOR, 50th Sess., 26th mtg., U.N. Doc. E/CN.4/Sub.2/Res/1998/8 (1998).

⁴³ JOloka-Onyango and DUdagama, *The Realization of Economic, Social and Cultural Rights: Globalization and Its Impact on the Full Enjoyment of Human Rights*, U.N. ESCOR, 52d Sess., U.N. Doc. E/CN.4/Sub.2/2000/13 (2000) (submitted in accordance with Sub Commission Resolution 1999 /8); JOloka-Onyango and D. Udagama, *Economic, Social and Cultural Rights: Globalization and Its Impact on the Full Enjoyment of Human Rights*, U.N. ESCOR, 53d Sess., U.N. Doc. E/CN.4/Sub.2/2001/10 (2001) (submitted in accordance with Sub-Commission Resolution 1999/8 and Commission on Human Rights Decision 2000/102).

⁴⁴ J Oloka-Onyango, *Comprehensive Examination of Thematic Issues Relating to the Elimination of Racial Discrimination: Globalization in the Context of Increased Incidents of Racism, Racial Discrimination and Xenophobia*, U.N. ESCOR, 51st Sess., U.N. Doc. E/CN.4/Sub.2/1999/8 (1999).

⁴⁵ JBengoa, *The Realization of Economic, Social and Cultural Rights: The Relationship Between the Enjoyment of Human Rights, in Particular Economic, Social and Cultural Rights, and Income Distribution*, U.N.

primary objective of international trade, investment, and finance policy and practice.⁴⁶ Indeed it can be said that these studies have generally culminated in the adoption of resolutions in which it asked all governments and forums of economic policy being asked to take fully into consideration the obligations and principles of human rights in the formulation of international economic policy. While these institutions have taken these requests to heart in recent times, it must however be noted that a more pronounced consideration of human rights is required on the parts of these institutions.

4. Globalization in the Context of Nigeria and Human Rights implications

The operation of globalization in Nigeria has not lived up to the expectations that heralded its adoption. The catch for Nigeria as well as other developing countries, was that upon the adoption of neoliberal policies handed down by the trio of the IMF, World Bank and WTO, states would experience trade growth leading to improved economy which shall in turn enhance the protection of social, economic and cultural rights of citizens. The domino effect of this was also expected to enhance the fulfilment of civil and political rights owing to the human rights principle of indivisibility and interdependence. To this end, Nigeria adopted a policy shift from trade and exchange controls to economic liberalization since 1986. Currently, Nigeria is tagged the headquarters of extreme poverty.⁴⁷

ESCOR, 49th Sess., U.N. Doc. E/CN.4/Sub.2/1997/9 (1997).

⁴⁶ Joloka-Onyango and D Udagama, *The Realization of Economic, Social and Cultural Rights: Human Rights as the Primary Objective of International Trade, Investment and Finance Policy and Practice*, U.N. ESCOR, 51st Sess., U.N. Doc. E.CN.4/Sub.2/1999/11 (1999).

Globalization results in inequality amongst states leading to the underdevelopment (failed economy) of developing states as arising from uneven income distribution which in turn leads to inability to protect economic, social and cultural rights by developing states to wit; Nigeria. This is incidentally leads to poverty of the people. It is in this sense that development has been acknowledged by the United Nations Declaration on the Right to Development to be a right which culminates in the welfare of the individual who should be the beneficiary and active participant in the right to development.⁴⁸

This paper observes that in as much as globalization has resulted in inequality amongst developing and developed states, with the latter always at an advantaged position, such inequality is replicated at the national level between the rich and the poor. For instance those in the ogoni rural communities of the Niger Delta region in Nigeria have little or no access to cable tv and have no awareness of the IMF or World Bank policies compared to the rich in Maitama in Abuja, Nigeria.⁴⁹

The human rights implications of failing to meet with the much touted goal of globalization is considered in the context of Nigeria. Indeed, the poor Nigerian people owing to globalization, are confronted with the following human rights violations which protection ought to be universal in principle as well as in practice.

⁴⁷ H Karas and others, 'Rethinking Global Poverty reduction in 2019' <www.brookings.edu/blog/future-development/2018/12/13/rethinking-global-poverty-reduction-in-2019> accessed 4 July 2020.

⁴⁸ Art. 1, Declaration on the Right to Development, General Assembly resolution 41/128 of 4 December 1986.

⁴⁹ Similar Illustrations were offered by J Scholte, 'Globalization, Governance and Democracy in Post Communist Romania (1998) (5) (4) *Democratization* 66-67.

On account of extreme poverty, Nigerians are deprived of the right to food, right to health, right to education, right to work, Indeed the failure to fulfil these economic, social, cultural rights have been held to have a domino effect on Civil and political rights as well as even group rights like the right to self-determination.⁵⁰ This effect is only possible on the ground of the universality, indivisibility, interdependence and interrelatedness of human rights.¹⁰⁶ Aply put, one who has not eaten can not be said to have the right to life or even the right to work because the hungry individual is neither able to work nor live.

This paper observes that the average Nigerian, courtesy of globalization policies, is first deprived of the enjoyment of economic social and cultural rights and by extension, civil and political rights. This is without forgetting that it is now common place for most states, particularly Nigeria to recline on the both International and national legal instruments which prescribes that ESCR are to be protected only in consideration to the equitable utility of available resources.⁵¹ In Nigeria, the justification for such non-fulfilment is even more pronounced given the provisions of

⁵⁰ The right to self determination provides for the right of the people to exercise sovereignty over their natural wealth and resources. Art 1 (2) of the ICESCR and the ICCPR stipulates that no case justifies the deprivation of the people of their means of subsistence. General Comment via General Assembly resolution 1803 (XVII) of 1962, provides that the aim of international cooperation is to further the independent national development and shall be based upon respect for their sovereignty over their natural wealth and resources.

⁵¹ Art. 2 of the ICESCR which in effect is that state parties are only required to take actions with a view to progressively realizing the rights enumerated therein to the maximum of its available resources.

Section 6 (6) of the Constitution explicitly renders non-justiciable economic, social and cultural rights as contained in Chapter 2.⁵²

This paper observes that this position has been largely blown out of proportion by governments as absolving themselves of obligations. In the General comment on the nature of state parties obligations under the ICESCR,⁵³ The Committee on Economic, Social and Cultural Rights declared that indeed such provision vests a legal obligation on state parties.⁵⁴ At the least states are obliged to realize maximum standards relating to each of the rights utilizing available resources in an effective manner. To this end, reckless use of available resources by state parties would amount to a breach of these rights.

Again, owing to trade liberalization policies, the Nigerian states have removed International barriers thereby allowing non-state actors in the form of MNCs to freely operate within the state with little or no regulation. This is without forgetting that MNCs as non-state actors have grown so much in influence and strength that contemporary literature finds them even more powerful than the governments of states. This reputation is underscored by the way and manner their operations have been conducted especially on flagrant breach of environmental and labour rights.

⁵² CFRN 1999 (as amended).

⁵³ General Comment No. 3 (1990), Committee on Economic, Social and Cultural Rights, Reports on the 5th Session, Economic and Social Council, Official Records 1991, Supplement No. 3 (E/1991/23-E/C.12/1990/8), Annex III.

⁵⁴ State obligations have been elaborated by the Limburg Principles on the Implementation of the ICESCR, 1996 and the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997).

In this regard, the plight of the ogoni people of the Niger Delta region owing to the oil exploration activities of Shell is instructive. ¹¹³

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The average Nigerian inhabiting most communities in those parts are deprived of their rights to own and use landed property owing to the damage orchestrated by oil exploration by Shell.⁵⁵ Other incidental rights like the right to food, health, work etc. are also affected.

In respect to the right to work (employment), these MNCs as against the promises of globalization (job opportunities) would bring in expatriates from their countries on the ground of lack of expertise on the part of Nigerians. The only area where Nigerians find these so called jobs afforded by globalization is in the area of cheap informal labour which these MNCs offer on a contract basis because it is cheaper and bereft of labour right guarantees and conditions of service which an official contract of employment would legally require. On this score, Nigerians are stripped in the areas of the right to work and the incidental labour rights which provides for fair working conditions and terms of service. The Nigerian state like most of its counterpart in the south engage in a perverse competition to provide the 'best' investment environment by progressively denigrating labour standards.

In the face of dearth of job opportunities, Nigerians are forced to migrate to developed states in search of a better standard of living only to be faced with similar human rights infractions especially in

⁵⁵ Amnesty International, 'No clean up, no justice: Shell's Oil Pollution in the Niger Delta' <<https://www.amnesty.org/en/latest/news/2020/06/no-clean-up-no-justice-shell-oil-pollution-in-the-niger-delta/>> accessed on 7 July, 2020. It is reported that nearly 10 years after the Ogoni clean up commenced, work has only been done in 11% of planned sites, while vast areas remain contaminated.

the area of migrant rights. Despite the fact that developed states rely on migrant labour to sustain their economies, the extent to which migrants are recognized is arguable. It has been observed that migrants (especially domestic workers of various kinds) make up the 'hidden state' in Europe and North America.⁵⁶ Generally speaking, migrants are not allowed to vote in local and national elections and are often not allowed to work in the public sector even when the economies of most of these states rely heavily on the cheap, free and flexible labour force that migrants unfortunately provide. Indeed, they constitute a vulnerable population whose human rights are often ignored by national laws of their states of origin or the receiving states.

Migrants including Nigerians who are of the black race face severe discriminatory and racial treatment in these states also. Indeed, the ongoing 'black lives matter' protests all over the globe is a response to these gruesome human rights infractions suffered by the black race in other states. In this sense, it has been argued while many of the issues confronting people of colour remain the same, globalization has changed the form and added a higher degree of severity to the challenges.

At the most vulnerable cadre of human rights infractions are women as they are vulnerable to sexual assaults as well as discrimination on account of gender. Despite the adoption of international instruments like the Convention on the Elimination of All Forms of Discrimination against Women and other human rights instruments for women protection, globalization has

⁵⁶ B Anderson, *Britain's Secret Slaves: An Investigation into the Plight of Overseas Domestic Workers* (1st edn, London: Anti slavery International and Kalayaan 1993).

orchestrated more complexities in the economic as well as in cultural and political arena. In respect of economic rights, women have been described as bearing the yoke of globalization. 86 Since trade liberalization spurs preference for cheap labour, women are not spared the exploitation in informal sectors⁵⁷ who record increased participation compared to formal sectors. This is because it provides the opportunity of combining paid work with house chores. 87 In formal sectors, they are hardly promoted to certain positions as they are viewed as weak.

5. Globalization and the Universality of Human Rights

The principle of Universality of Human rights presupposes that human rights are inalienable, self-evident and applicable to all persons irrespective of sex, race, age, religion, social status etc. Simply put, all women, children, elderly as well as vulnerable groups such as refugees, migrants, asylum seekers and minorities must assume the status of equal beneficiaries of whatever human rights has to offer. This position finds expression in the UNHDR, an international instrument which signifies the first step in the quest for the attainment of a common standard for human rights

⁵⁷ As against the principles of the International Labour Organisation (ILO) standards as well as those encapsulated in the Declaration on Fundamental Principles and Right to Work 1998 as well as the very recent ILO Convention on Violence and Harassment, 2019. (No.190); Human Rights Watch, 'End Violence, Harassment at Work' <<https://hrw.org/news/2020/06/18/end-violence-harassment-work>> accessed on 17 June, 2020. The convention recognizes that violence and harassment go beyond physical workplace and includes other activities relating to work such as commutes and offsite work events. It also addresses gender based violence specifically including the intersection of domestic violence and work including the steps governments should take as well steps domestic violence survivors can seek without losing their jobs.

protection on the part of states.⁵⁸The Universality of Human Rights principle was further adumbrated by both the ICCPR and the ICESCR, all jointly referred to as the International Bill of Rights.⁵⁹ The principle of universality of human rights also connotes that every person in all parts of the world are entitled to the enjoyment of all human rights irrespective of their origin; Asia, Africa, Europe, America or Africa. To this end, the Vienna Programme of Action and Declaration of Human Rights expressly provides that human rights form the legitimate concern of the international community but further situates the responsibility of states in treating human rights globally, in a fair and equal manner, bearing in mind cultural, religious and historical backgrounds.⁶⁰It is in this sense that the universality of human rights meets with the westphalian notion of state sovereignty; states are bound to protect under the full glare of the international community with the individual being transformed from a subject to an object of international law. These developments therefore form the pillar of the contemporary and modern system of international politics. It is however pertinent to note that the contemporary world order whose value oriented goal is the protection of human rights principles and specific rights is not the sole terrain of International Human Rights Law. Other overlapping regimes include International Humanitarian Law (IHL), International Criminal Law (ICL) and International Criminal Justice(ICJ).⁶¹

⁵⁸ Preamble, Art. 55 and 56 of the UNDHR of 1948. The UNDHR in Art. 28 also recognises the right of everyone to a social and international order in which the freedoms and rights set forth therein are realized.

⁵⁹ International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights, both of 1966.

⁶⁰ S. 1(5) of the Vienna Programme of Action and Declaration of Rights 1993.

It is in respect of the universality of human rights principle that an examination of the most decisive feature of the 21st century; globalization has become unavoidable. With the responsibility of state to universally protect human rights in a globalizing world comes challenges which the human rights law discourse didn't envisage originally. The creation of powerful non-state actors by the processes of globalization, no doubt, puts states at risk of being incapable of effectively ensuring human rights protection. Indeed, it has been said that where in fact there is a shift in power, a shift in responsibility is expected. It is was in this sense that Nkrumah admits this incapacity on the part of post war institutions stating that '...our post-war institutions were built for an inter-national world, but now we live in a global world.'⁶² Simply put, the world has changed and with forces of globalization constantly at work, state responsibility on issues such as human rights protection is faced with immense challenges and considerations.

Issues like population growth and migration of people from developing countries to developed world for greener pastures, the plight of millions of refugees fleeing from aggression, proliferation of powerful MNCs in developing states of the world, revolution in the information and telecommunication and so on, have all reshaped the universality of human rights discourse posing new challenges, threats as well as opportunities to modern life. Globalization has caused global conditions of inequality and discrimination; two concepts which are pivotal to the corpus of human rights instruments and practice. As it pertains to discrimination based on colour, sex religion and ethnicity, these

⁶¹ MC Bassiouni 'The Future of Human Rights in the Age of Globalization' [2012] (40) (1-3) *DENV. J. INTL. L. POL'Y*; 22 at 24.

⁶² K Nkrumah, Secretary General of the United Nation during the Millennium Summit in the Year 2000.

prohibitions have been contended as having attained the status of *jus cogens* from which derogations can't be made even in times of war.

This work observes that globalization in as much as it offers opportunities to the international community, it also presents threats in the area of universal application of human rights. Taking into account the complications and urgencies in changing dynamics in global governance, shrinking role of state, emergence of powerful non-state actors at the global level, increasing visibility of different cultural identities, this paper adopts the view that if indeed human rights are to be universal, these complications ought to be subservient to human right considerations and not otherwise. Indeed, contemporary times reveal a wave of exceptionalism practiced by powerful state actors under the guise of security, political, economic and even cultural and religious considerations.⁶³

Security Considerations

A dominant feature of the present era of globalization is the character of powerful state actors justifying gross human rights violations with the phrase 'national security considerations'. On this point, clear instances come to mind notably the 2003 US invasion of Iraq with the incidental human rights violation that accompanied the move. Butler observed that while fallen troops are readily remembered and honoured, others whom were killed by these troops have not been remembered in the same way, suggesting that other lives are regarded as more valuable.⁶⁴ Also, the

⁶³ A Mostafa, 'Globalization and the Universality of Human Rights (A Critical Glance over the Western Approach) [2006] (3) (81) *International Studies Journal*; 81.

⁶⁴ JButler, *Precarious Life; The Powers of Mourning and Violence* (1st edn London: Verso Books 2004)20.

refusal of the U.S. to ratify the Rome Statute of the International Criminal Court in a bid to prevent her soldiers who committed human rights infractions from prosecution by the court clearly reflects that human rights for Americans are not universal in that the rights of these soldiers are above those of the victims in these other countries.⁶⁵

Similar double standards exhibited by powerful state actors courtesy of globalization suggesting that the universality of human rights is far from realistic abound. In this regard, ‘extraordinary rendition’ and torture in Guantanamo, Cuba, Abu Ghaib, and Bagram have been used by U.S. military and intelligence personnel as well as private contractors.⁶⁶ The U.S.’s invasion of Iraq and Afghanistan are also two of such examples, as is NATO’s bombing of Libya. Bassouini however observed that all three events had one thing in common, regime change, and few raised concerns over the human rights violations caused by these armed attacks.⁶⁷

Political and Economic Considerations

The universal application of human rights has also not been applied owing to political factors. While globalization takes the credit for the move to criminalize certain human rights as acts or crimes against humanity, it has been observed that the ICJ paradigm of

⁶⁵ Mostafa (n.61); SShane, *Coming Soon: The Drone Arms Race*, N.Y. TIMES (8 October, 2011), <<http://www.nytimes.com/2011/10/09/sunday-review/coming-soon-the-drone-armsrace.html?pagewanted=all>> accessed on 9 March 2019.

⁶⁶ USA TODAY, ‘Court Case Reveals Details of Secret Flights’ USA TODAY (Sept. 9, 2011) <<http://www.usatoday.com/news/washingtonstory/2011-09-01/Court-case-reveals-detailsof-secret-flights/50218452/1>> accessed on 9 March 2019.

⁶⁷ Bassiouni (n.59)28.

post-World War II was essentially a victor's justice system - those prosecuted at Nuremberg and Tokyo and in subsequent proceedings were either nationals of defeated Axis power or those who collaborated with them.⁶⁸ Another pointer to this is the fact that in some instances, human rights is employed as a political tool in the foreign policies of some states.

In this regard, the problem here is that human rights is made subservient to these other areas of foreign policy like security and economy in that where a clash of interest occurs, human rights protection is sacrificed on the altar of the economic, political or as earlier stated security interests. Netherlands for example, in a text governing "Human Rights and Foreign Policy", provides that the 'government desire to work for human rights does not alter the fact that this is part of its total policy and cannot under all circumstances enjoy priority over the aims of that policies...'⁶⁹ Other countries particularly Sweden have declared similar policies in their relevant statements and publications. In African states which particularly grovels with the cud of poverty and underdevelopment, human rights is sacrificed on the altar of political and economic considerations as MNCs mindlessly occasion breach to the environment, workers' rights and also connive with the respective governments to occasion untold poverty on the people through corruption.

Cultural and Religious Diversity

Essentially, globalization also enhances the movement of people from all states of the world thereby leading to a confluence of

⁶⁸ MC Bassiouni, *Globalization and Its Impact on the Future of Human Rights and International Criminal Justice* (1st edn Brussels: Intersentia 2015) 50.

⁶⁹ The Government of Netherlands through Ministry of Foreign Affairs, *Human Rights and Foreign Policy* Chapter 7, Part 3.

different cultural identities in states. In theory, while the Vienna Programme of Action and Declaration of Human Rights appears to have settled contentions regarding the cultural relativist argument on the universality of human rights discourse, in practice cultural and religious sentiments have continued to underscore reasons for exclusion of persons from the enjoyment of human rights. Despite various international human rights provisions on the universal application of human rights, persons of a certain class, minority group, race, gender (particularly women), migrants etc., are still deprived of the enjoyment of their basic human rights on the basis of religion, culture, traditions etc. An example in focus is the ban on the wearing of *hijab*,⁷⁰ *niqab*⁷¹ and *burqa*⁷² in some western countries.⁷³

In Africa, particularly in Zambia, Nigeria, Kenya and Zimbabwe, married women face formidable barriers to claiming property and land.⁷⁴ In France, (the *Counseild'etat*)⁷⁵ has metamorphosed into laws passed prohibiting the wearing in state schools of signs or dress by which pupils overtly manifest religious affiliation in France.⁷⁶ In 2010, an Act was also passed banning face-covering garments - *niqab* and *burqa* in public spaces such as restaurants,

⁷⁰ Derived from the Arabic for veil, *Hijab* is a scarf which covers the head and neck but leaves the face clear.

⁷¹ The *niqab* is a veil for the face that leaves the area around the eyes clear.

⁷² The *burqa* is the most restrictive, covering the entire face, leaving just a mesh screen to see through.

⁷³ In France for instance, Frenchwomen are not allowed to wear *Hijab* in public schools. In September 2011, two women were fined for wearing *niqab* in public. Also, it is illegal to wear *burqa* in public.

⁷⁴ Human Rights Watch, 'Women's Human Rights' <<https://www.hrw.org/legacy/wr2k2/women.html>> accessed on 6 June 2020.

⁷⁵ SBEnhabib, *The Claims of Culture: Equality and Diversity in a Global Era* (1st edn New Jersey: Princeton University Press 2002) 95.

⁷⁶ Shani (n.63)2.

schools and public transportation.⁷⁷ The French government justified these prohibitions on the ground that such acts are in conflict with the principle of *laicite*⁷⁸ or secularism which guides the French constitution (1946). This paper submits that if truly human rights are universal in practice, no principle no matter how rooted to a constitution justifies the flagrant breach of the right to freedom of thought, conscience and religion⁷⁹ of those Muslims in France. In the light of universality, this paper lends voice to the notion that one's religious or cultural identity is precisely what permits one to be human.⁸⁰ In Africa with particular reference to Nigeria, the federal character principle which aims to project equitable opportunity of all ethnic groups in employment, governance and other areas, is only but a paper tiger as cultural considerations in the form of ethnocentrism and tribalism has resulted in outright discrimination against minority groups from certain regions.

Indeed, if human rights are indeed considered to be universal, then there must be an acceptance that there is more than one way to be human of which one's culture and religion are attributes of human

⁷⁷ *ibid.*

⁷⁸ *Lacite* is an ideological form of secularism which claims to provide an ideological and philosophical value system by effectively privatizing religion and excluding it from the public sphere. It defines cohesion by asserting a purely political identity that confines to the private sphere any specific cultural or religious identities and protects the neutrality of the public sphere. O. Roy, *Secularism Confronts Islam* (Columbia University Press 2007) xiii; Art. 2 of the Constitution of France 1946 defines France as an indivisible, *laique*, democratic and social republic.

⁷⁹ Art. 18 of the UNDHR 1948; Art. 18 ICCPR 1966. Limitations of public safety, order, health or morals as contained in Para 3 of Art 18 of the ICCPR do not fall within the circumstances of the case.

⁸⁰ Shani (n.63).

identity. As Shani puts it, these cannot therefore be removed like a veil by the state in order to promote greater integration without dehumanizing the individual.⁸¹

6. CONCLUSION/RECOMMENDATIONS

Globalization poses serious challenges to the universality of human rights. It is in this regard that this paper advocates that a change in perception of human rights from a tool used in serving political interests of states to one which of course has the capacity of returning the world back to the gory state of nature. Human rights violations must be seen for what it really is – a breach of the social contract which holds the world in the balance since the end of the World War II. It is recommended that this perception change must entail reconceptualization of the policies of multi-lateral institutions to substantially reflect human rights considerations. Also the institutional frameworks must urgently be reformed especially in the areas of leadership, transparency in decision making, negotiations and policy reviews.

Furthermore, there is the need for the creation of a policy framework to regulate the activities of MNCs as well as powerful state actors especially in the area of respect for human rights. It is suggested that this framework be extended to other regimes of international trade, investment and finance as well as the institutional frameworks upon which it rests say the WTO, World Bank, IMF and so on. There is also the need for more cross agency rapport and dialogue amongst these organizations especially in the area of giving more consideration to human rights.

The role of civil societies in spreading awareness of human rights must continue to highlight the domineering status of human rights

⁸¹ *ibid.*

over and above other considerations especially in exerting pressure to ensure that economic institutions do take international human rights explicitly into account when making decisions. It is on this basis that 'never again' would the international community admit sacred cows in the form of powerful state and non-state actors who either down play the responsibility to protect its population for certain considerations or in the case of non-state actors who exploit weak states by perpetuating human rights violations. This is because humanity is the same everywhere. 'Never again' should therefore mean 'Never again' and not 'Never again not to us'.

This paper concludes that the framework for the present international human rights regime is bereft of the capacity to confront powerful states as well as influential non-state actors. States on whose oars the responsibility to protect lies may be unable or unwilling to confront powerful non-state actors because of economic reasons. It is in view of this, that the paper recommends that the international community takes advantage of the opportunities afforded by globalization in developing a more flexible framework within which responsibility for human rights violation effectively transcends the control of states. With specific reference to the Responsibility Protect framework, it is strongly recommended that the activities of powerful state parties be equally given expedient treatment as was recorded during human rights violations in Syria and Libya.

In particular reference to Africa in which Nigeria is expected to play a leadership role, Africa as a region must come together to foster a formidable trade integration in order to assume proper footing in the global economy. In as much as the NEPAD framework offers a step in the right direction, commitment on the

part of state parties must be honoured. The AfCFTA which suffers
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delay in implementation owing to the current COVID 19
pandemic,⁸² must be subjected to review given the current economic
realities as exposed by the pandemic. Although democracy, human
rights and gender equality are mentioned,⁸³ such values should not
constitute exceptions but the norm.

⁸² The African Continental Free Trade Area (AfCFTA) was initially slated for the launch of implementation phase in 1 July, 2020 but has been postponed owing to the COVID 19 pandemic.

⁸³ Preamble to the AfCFTA.